

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 23 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In re the Marriage of:	)	
	)	
VIJAYA CHADA,	)	2 CA-CV 2011-0087
	)	DEPARTMENT B
Petitioner/Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
and	)	Not for Publication
	)	Rule 28, Rules of Civil
LUMAKAR HANUMANDLA,	)	Appellate Procedure
	)	
Respondent/Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20102671

Honorable Lisa I. Abrams, Judge Pro Tempore

APPEAL DISMISSED

Khalidi & Ferrier, PLLC  
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Tucson  
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V Á S Q U E Z, Presiding Judge.

¶1 In this dissolution of marriage action, Lumakar Hanumandla (“Husband”) appeals from the trial court’s under-advisement ruling entered on March 16, 2011, in

favor of appellee Vijaya Chada (“Wife”). For the reasons stated below, we dismiss the appeal for lack of jurisdiction.

### **Factual and Procedural Background**

¶2 After seventeen years of marriage, Wife filed a petition to dissolve the parties’ marriage in July 2010. Following a two-day trial, the court issued a signed under-advisement ruling dissolving the marriage and resolving issues relating to parenting time and custody of the parties’ minor children, child support, spousal maintenance, property and debt division, and community waste. In that ruling entered on March 16, 2011, the court also granted Wife’s “request for a portion of [her] attorney fees and costs in an amount to be determined” and directed her counsel to submit an affidavit in support of fees and costs for the court’s consideration. The court further directed Wife’s counsel to prepare a decree of dissolution consistent with its orders and placed the matter on the inactive calendar pending receipt of the decree.

¶3 On March 31, 2011, Wife filed a motion for reconsideration essentially challenging the trial court’s division of property and debts. On April 11, Wife’s counsel filed an affidavit of attorney fees and costs as directed by the court in the under-advisement ruling. On April 13, Husband filed a notice of appeal “from the Court order entered on March 16, 2011,” followed a few days later by a motion for reconsideration of that ruling. On June 29, Husband filed with this court an unopposed motion to stay the appeal and revest jurisdiction in the trial court to address the issues raised by the parties’ motions for reconsideration. In his motion to stay the appeal, Husband avowed “[t]he Ruling [entered March 16, 2011] was signed by the judge and was therefore a final order

subject to appeal.” The motion to stay the appeal was granted and jurisdiction revested in the trial court.

¶4 On September 2, 2011, the trial court issued its second under-advisement ruling addressing the issues raised in the parties’ motions for reconsideration and awarding Wife \$3,500 in attorney fees. The court affirmed “all other orders not specifically modified or amended” and ordered the exhibits returned to this court. The clerk of the superior court subsequently transmitted the supplemental record on appeal to this court. Neither party filed a notice of appeal challenging the court’s September 2 ruling.

#### **Discussion**

¶5 Husband’s notice of appeal states that he is appealing from “the Court order entered on March 16, 2011.” Although he asserts we have jurisdiction pursuant to A.R.S. §§ 12-120.21 and 12-2101, and Wife does not dispute this assertion, we have an independent duty to determine whether we have jurisdiction over an appeal. *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991); *see also Arvizu v. Fernandez*, 183 Ariz. 224, 226, 902 P.2d 830, 832 (App. 1995) (appellate court should determine jurisdiction sua sponte). Our jurisdiction is limited by statute, and we have no authority to consider the merits of an appeal over which we lack jurisdiction. *See Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981).

¶6 Generally, an appeal may be filed “[f]rom a final judgment entered in . . . a superior court.” § 12-2101(A)(1); *see also Davis*, 168 Ariz. at 304, 812 P.2d at 1122. A final judgment “disposes of the cause on its merits, leaving no question open for judicial

determination.” *Decker v. City of Tucson*, 4 Ariz. App. 270, 272, 419 P.2d 400, 402 (1966). In a family law case, if a court order does not adjudicate all claims between the parties it is not appealable unless it meets the requirements of Rule 78(B), Ariz. R. Fam. Law P. See *Musa*, 130 Ariz. at 313, 636 P.2d at 91 (discussing Rule 54(b), Ariz. R. Civ. P.); compare Ariz. R. Fam. Law P. 78(B), with Ariz. R. Civ. P. 54(b).<sup>1</sup> Pursuant to Rule 78(B), an order that disposes of fewer than all claims is appealable if the trial court’s judgment contains “an express determination that there is no just reason for delay and . . . an express direction for the entry of judgment.” Although no “magic words” are required and the “express determination” can be made in different ways, the trial court nevertheless must make “the determination of whether or not the judgment is final and appealable.” *Ariz. Bank v. Superior Court*, 17 Ariz. App. 115, 119-20, 495 P.2d 1322, 1326-27 (1972).

¶7 In the absence of a judgment pursuant to Rule 78(B), our supreme court has established “a limited exception to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial.” *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 37, 132 P.3d 1187, 1195 (2006), citing *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981); see also *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626

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<sup>1</sup>The Committee Comment to Rule 78 provides that the rule is based on Rule 54, Ariz. R. Civ. P. “Wherever the language in [the Arizona Rules of Family Law Procedure] is substantially the same as the language in other statewide rules, the case law interpreting that language will apply to these rules.” Ariz. R. Fam. Law P. 1 committee cmt.

(2011). Apart from this limited exception, a premature notice of appeal filed “in the absence of a final judgment . . . is ‘ineffective’ and a nullity.” *Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626, *quoting Smith*, 212 Ariz. 407, ¶ 39, 132 P.3d at 1195.

¶8 Here, although the trial court’s March 16, 2011 under-advisement ruling awarded Wife a portion of her attorney fees, the amount of the award was not determined by that ruling. A trial court’s ruling on the amount of attorney fees is more than ministerial, it is a “substantive matter[] requiring the discretion of the decision-maker.” *Smith*, 212 Ariz. 407, ¶ 38, 132 P.3d at 1195; *see also State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 595, 845 P.2d 513, 521 (App. 1992) (“The determination of the reasonableness of an award of attorney’s fees is within the discretion of the trial court . . .”). Thus, a judgment is not final until claims for attorney fees are fully resolved. *See Nat’l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 36, 119 P.3d 477, 484-85 (App. 2005). Consequently, Husband’s notice of appeal filed in the absence of a final judgment was ineffective and a nullity. *See Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626.

¶9 Additionally, although the trial court’s September 2, 2011 ruling fully resolved the issue of attorney fees, we have found no authority for the proposition that an order entered subsequently to a notice of appeal can cure a void notice. Instead, our case law requires a supplemental notice of appeal. *See Engel v. Landman*, 221 Ariz. 504, ¶ 16, 212 P.3d 842, 847-48 (App. 2009) (no jurisdiction over premature notice of appeal when not cured by supplemental notice of appeal). Here, neither party filed a notice of appeal from the September 2 ruling. Thus, we do not have jurisdiction over this appeal.

**Disposition**

¶10 For the reasons stated above, this appeal is dismissed for lack of jurisdiction.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge